

Civil Revision Application No 32 of 96

Date of decision: 02/02/96

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SATUBHAI (SATYAVART)JIVABHAI PATEL

vs

GALABHAI SADABHAI THAKORE

MR R.N. SHAH for Petitioner

MR D.C. DAVE for Respondent No. 1, 2

Coram : MR.JUSTICE S.D.SHAH

Date : 2nd February, 1996

ORAL JUDGEMENT

1. Rule. Mr.D.C. Dave waives service of Rule on behalf of the respondents. With the consent of the learned advocates appearing for the parties, the matter is finally heard today.
2. The trial court has by the impugned judgment and order

passed below Exhibit-56 in Regular Civil Suit No. 130 of 1993 held that the burden to prove issues No. 3 to 8 is on the defendants and therefore defendants should begin their evidence. The trial court has based on the pleadings of the parties, unfortunately, at this stage recorded a conclusion that issues No. 1 and 2 are admitted by the defendants. That may or may not be so, but once the issues are framed, and admittedly which burden to prove such issues is on the plaintiffs, defendants cannot be called upon to lead evidence. This is the primary and the basic principle of the Code of Civil Procedure read with the provisions of the Evidence Act. The trial court has failed to notice this primary position. The Order of the trial court is thoroughly unsustainable and is quashed and set aside. Mr. D.C. Dave, learned Counsel appearing for the plaintiffs states on the instructions of the plaintiffs that the plaintiffs do not want to lead any evidence on issues No. 1 and 2. He states before the court that he will move an appropriate application to the trial court for deletion of such issue or to recast such issue as burden to prove negative, cannot be cast on the plaintiffs. It will be open to the plaintiffs to prefer such application which the trial court shall decide in accordance with law. The application, if any, of the aforesaid nature, shall be made within a period of ten days from today and the trial court shall decide the same within a further period of ten days thereafter. In case Issue No. 1 is maintained, the plaintiff shall file pursis that they do not want to lead any evidence on such issue. If issue No.2 is permitted to be reframed or recast, the trial court shall decide as to on whom the burden to prove the same would lie and it would thereafter pass appropriate order calling upon party to lead evidence.

3. Rule is accordingly made absolute to the aforesaid extent only. No order as to costs.